IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 960 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHHOTUBHAI DALSUKHBHAI VASAVA - Petitioner(s)
Versus
STATE OF GUJARAT & 3 - Respondent(s)

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Appearance :
MR HARIN P RAVAL for Petitioner(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4
Mr. Dipen Desai, AGP for Respondent(s) : 1,
None for Respondent(s) : 2 - 3.
MR JOY MATHEW for Respondent(s) : 4,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH
Date : 21/04/2006

ORAL JUDGMENT

Rule. Shri Dipen Desai, learned AGP waives service of Rule on behalf of respondents No. 1 to 3, and Shri Joy Mathew, learned advocate waives service of Rule on behalf of respondent No.4. With the

consent of learned advocates appearing for the parties, the matter is taken up for final hearing today.

2. By way of this petition under Article 226/227 of the Constitution of India, the petitioner has prayed for an appropriate writ, direction or order quashing and setting aside the judgment and order passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat, dated 14.11.2005 in Revision Application No. 32 of 1998 in dismissing the same and confirming his order dated 7.6.2005/13.6.2005 whereby the order dated 21.8.1997 passed by the Deputy Collector under Section 73A/73AA of the Bombay Land Revenue Code is confirmed. Few facts are necessary for determination of the present Special Civil Application.

3. It appears from the record that, proceedings under Section 73A/73AA of the Bombay Land Revenue Code [hereinafter referred to as “the Code”] came to be initiated by the Deputy Collector in respect of

land bearing Revenue Survey No. 288 situate at Village Taropa, Taluka-Nandod, District-Narmada and vide order dated 21.8.1997 passed under Section 73A read with 202 of the Code, the Deputy Collector, Rajpipla, in Case No. 53/97 holding that there is breach of Section 73A/73AA of the Code by virtue of transaction in favour of the petitioner and original-owner, directed that the petitioner be removed from the land in question and to hand over possession of the land in question to the respondent No.4, original landowner.

4. Being aggrieved and dissatisfied with the order passed by the Deputy Collector, Rajpipla dated 21.8.1997 in Case No. 53/97, the petitioner preferred Revision Application No. 32/1998 before the Principal Secretary (Appeals), Revenue Department, State of Gujarat, and without giving any specific finding with regard to breach of Section 73A and 73AA of the Code and without assigning any reason and/or dealing with the submissions and contentions made on behalf of the parties the Principal Secretary (Appeals) by judgment

and order dated 29.9.2003/18.12.2003 dismissed the said Revision Application No. 32/1998. Being aggrieved and dissatisfied with the same, the petitioner had preferred Special Civil Application No. 1046 of 2005 before this Court and this Court by judgment and order dated 3.2.2005 quashed and set aside the judgment and order passed by the Secretary (Appeals) dated 29.9.2003/18.12.2003 in Revision Application No. 32/1998 and remanded the matter back to the Secretary (Appeals) by directing the authorities to decide and dispose of the said Revision Application afresh on its own merits and in accordance with law after dealing with all the contentions raised by the parties and by giving a specific finding pass a speaking order.

4.1. Inspite of the aforesaid direction issued by this Court, the Additional Chief Secretary (Appeals) dismissed the said revision application by judgment and order dated 7/13.6.2005 in absence of the petitioner and the petitioner by way of Special Civil Application No. 17524 of 2005 challenged the order

dated 7/13.6.2005 passed by the Addl. Chief Secretary (Appeals), Revenue Department, State of Gujarat in Revision Application No. 32/98 with the grievance that the petitioner was not served with the notice of hearing of the aforesaid proceedings. This Court after calling for the Record and Proceedings, allowed the aforesaid Special Civil Application by judgment and order dated 26.9.2005 and quashed and set aside the judgment and order passed by the Addl.Chief Secretary (Appeals), Revenue Department, State of Gujarat dated 7/13.6.2005 in Revision Application No. 32/1998 and again remanded the matter to the Additional/Principal Chief Secretary (Appeals), Revenue Department, State of Gujarat for deciding the same afresh in accordance with law and on merits after hearing the petitioner and respondent No.4 and other affected/interested persons. Again on remand, by impugned judgment and order, the Principal Secretary (Appeals), Revenue Department, by judgment and order dated 14.11.2005 has dismissed the said Revision Application confirming his earlier order dated 7.6.2005/13.6.2005 in Revision Application No.

32/1998 in dismissing the same and confirming the order passed by the Deputy Collector, Rajpipla under Section 73A/73AA of the Bombay Land Revenue Code. Aggrieved and dissatisfied with the same, the petitioner has preferred the present Special Civil Application under Constitution of India.

5. Shri Harin Raval, learned advocate appearing on behalf of the petitioner has submitted that apart from the merits of the case, inspite of the fact that twice the matter came to be remanded by this Court the Principal Secretary (Appeals), has dismissed the Revision Application confirming his earlier decision, without assigning any reason and has passed a non-speaking order. He has submitted that except narrating the facts no specific finding has been given by the Principal Secretary (Appeals) and mechanically without assigning any reason the impugned judgment and order has been passed which requires to be quashed and set aside. Shri Joy Mathew, learned advocate appearing on behalf of the private respondent No.4 and Shri Dipen Desai, learned

AGP are not in position to satisfy this Court that the order passed by the Secretary (Appeals) is a speaking order and/or he has dealt with the submissions made on behalf of the parties.

6. This Court has gone through the judgment and order passed by the Principal Secretary (Appeals) dated 14.11.2005 and on going through the same except mentioning that he had gone through the written submissions made on behalf of the parties and that the same are not required to be accepted, nothing has been mentioned by the Principal Secretary (Appeals), and the impugned order dated 14.11.2005 is a non-speaking order and without dealing with and/or discussing the contentions made on behalf of the parties. By judgment and order dated 3.2.2005 passed in Special Civil Application No. 1046 of 2005 while quashing and setting aside the judgment and order passed by the Secretary (Appeals) dated 29.9.2003/18.12.2003 in Revision Application No. 32/1998 and remanding the matter to the said Secretary (Appeals), this Court had specifically

directed the Secretary (Appeals), Revenue Department to decide the Revision Application afresh on its own merits in accordance with law after dealing with all the contentions raised by the parties and to give a specific finding on dealing with the same by passing a speaking order, and inspite of the aforesaid direction given earlier and despite remanding the matter twice to him, the Principal Secretary (Appeals) has again dismissed the Revision Application without assigning any reason and passed a non-speaking order, i.e., to say that he has repeated the same thing again. Not only that, while deciding the Revision Application he has neither dealt with the contentions/submissions made on behalf of the parties nor has he passed a speaking order. Under the circumstances, the judgment and order passed by the Principal Secretary (Appeals) dated 14.11.2005 is required to be quashed and set aside. The matter is, therefore, required to be remanded once again to the Principal Secretary (Appeals), Revenue Department, State of Gujarat.

6.1. At this stage, it is necessary to refer a decision of this Court in the case of ***Ambalal Somabhai Parmar Vs. State of Gujarat, reported in 2004(7)G.H.J. Page 138,*** wherein placing reliance upon a judgment of the Hon'ble Supreme Court, this Court has emphasized that the lower authorities are required to pass a reasoned order. It is required to be noted that in many judgments, this Court has, looking to the factual aspects of the case on hand, considered expedient and remanded the matter to the Secretary (Appeals), Revenue Department, State of Gujarat, as it was found that in some cases the order passed by the Secretary (Appeals) was either found to have been passed without assigning any reason or found to have been a non-speaking order which is not in conformity with the ruling of the Apex Court. Still, the Secretary (Appeals) goes on passing non-speaking orders.

7. Under the circumstances, while remanding the matter again to the Principal Secretary (Appeals), this Court proposes to impose an exemplary cost upon

the Principal Secretary (Appeals), Revenue Department, who has passed the impugned order and has not complied with the direction issued by this Court, which is quantified at Rs. 2,500. The cost is required to be paid by the erring Officer and he should personally bear the same.

8. For the reasons stated above, the impugned judgment and order dated 14.11.2005 passed by the Principal Secretary (Appeals), Revenue Department, State of Gujarat, in Revision Application No. 32/1998 is hereby quashed and set aside. The matter is again remanded to the Principal Secretary (Appeals), Revenue Department, State of Gujarat, for deciding the same afresh in accordance with law and on merits. The Principal Secretary (Appeals), Revenue Department, State of Gujarat, is once again directed to decide and dispose of the said Revision Application after dealing with all the contentions raised and submissions made on behalf of the parties and to pass a speaking order. Rule is made absolute

to the aforesaid extent with a cost of Rs. 2,500, which the erring Officer, who has passed the impugned order, should personally bear and pay/deposit it within the period of four weeks from today.

[M.R. Shah, J.]

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